1941

SUPREME COURT OF THE UNITED STATES.

No. ~~303~~. 244 119.

FRANCIS M. WRIGHT, Auditor of State, WILLIAM B. THRALL, Comptroller, and ALFRED P. STONE, Treasurer of the State of Ohio, Appellants,

vs.

WILLIAM F. A. SILL, Appellee.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF OHIO.

GIDEON, Printer.

1943

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THE UNITED STATES OF AMERICA,
Northern District of Ohio, *ss.*

At a Stated Term of the Circuit Court of the United States for the Northern District of Ohio, in the Seventh Circuit, begun and held at the city of Cleveland, in said district, on the second Tuesday in November, being the thirteenth day of that month, in the year of our Lord one thousand eight hundred and sixty, and of the independence of the United States of America the eighty-fifth:

Present, the Honorable Hiram V. Willson, District Judge, and one of the judges of said court:

Among the proceedings then and there had, were the following, to wit:—

WILLIAM F. A. SILL vs. THE SUMMIT COUNTY BANK at Cuyahoga Falls, FRANCIS M. WRIGHT, Auditor of State, WILLIAM B. THRALL, Comptroller of the Treasury, and ALFRED P. STONE, Treasurer of the State of Ohio.	No. 830. In Chancery.

Be it remembered that heretofore, to wit, on the seventeenth day of December, in the year of our Lord one thousand eight hundred and fifty-nine, came the said complainant by his solicitors, and filed in the clerk's office of said court his bill in chancery herein, in the words and figures following, to wit:—

(Bill.)

To the honorable the Circuit Court of the United States for the Northern District of Ohio, in chancery sitting: Your orator, William F. A. Sill, respectfully represents that he is and has been for a long time last past a bona fide resident and citizen of the State of Connecticut, and that the respondents hereinafter named are residents and citizens of the State of Ohio, the Summit County Bank of Cuyahoga Falls being a corporation organized and doing business in the Northern District of Ohio, and the other respondents residing in the Southern District of Ohio: that heretofore, to wit, on the twenty-fourth day of February, A. D. 1845, the General Assembly of said State of Ohio, in order and for the purpose of creating and incorporating the State Bank of Ohio as well as branches thereof, and other banking companies in said last mentioned State, in due form of law, passed and enacted for that purpose, a certain act entitled "An act to incorporate the State Bank of Ohio and other banking companies;" and also, afterwards, to wit, on the 6th day of January, A. D. 1846, said General Assembly passed a certain other

act entitled "An act supplementary to an act to incorporate the State Bank of Ohio and other banking companies;" to which said acts your orator specially refers and makes the same a part of this petition. And your orator states that the Summit County Bank at Cuyahoga Falls, afterwards, to wit, on the 25th day of October, A. D. 1845, became and was in due form of law an incorporated body as a branch of said State Bank of Ohio, under and by the name and style aforesaid, with the capital stock of one hundred thousand dollars, which said capital stock was duly and fully subscribed in shares, and paid by them pursuant to the provisions of said act. Your orator further represents that he is the owner of eight thousand dollars of said capital stock, and has been such owner since the twenty-sixth day of January, A. D. 1851, and now is the actual and unconditional owner thereof, and as such stockholder is and has been at all times entitled in common with the other stockholders to a just pro rata proportion of all interests, profits and dividends appertaining to and resulting from said business, so to be done and transacted by said branch.

And your orator further represents, that on the said twenty-fifth day of October, A. D. 1845, the said Summit County Bank, at Cuyahoga Falls, became and was duly organized at its place of business, in Cuyahoga Falls, in Summit County, in said district, as such incorporate body, with general banking powers, and thereby, then and there became fully and in all respects invested with and entitled to all the benefits, grants, privileges, and immunities therein in the said several provisions in said acts contained, and to be in all respects protected in the continuance of said business of banking as therein provided.

And your orator further says, that under and by virtue of the several provisions of said acts, and incorporation of said branch in conformity thereto, a valid and binding contract and agreement was made and perfected by and between said Summit County Bank, at Cuyahoga Falls, in its corporate capacity, and the said State of Ohio, by which said branch, on its part and behalf, was fully authorized and empowered, and in all respects invested with, the rights and privileges of commencing, and thereafter carrying on and continuing under the provisions of said acts at said Cuyahoga Falls, said business of banking, to the full extent provided for and contemplated by the several provisions thereof, without molestation and subsequent alteration or change on the part or behalf of said State, or the legislation thereof, for and during the whole and every part of the period and time then next ensuing, until the first day of May, A. D. 1866, and that in the conducting of said business, said branch should be subject only to the liabilities, limitations, and restrictions therein, in said act specifically contained; and it was then and there especially understood and agreed, on the part and behalf of said State, that the capital stock, and assets and business of said branch should not, during the continuance of said business, be charged with,

or at any time become liable to, pay any taxes or assessments whatever, levied or assessed by the authority of said State, or by any law thereof, excepting only such taxes and assessments as in and by said acts were specifically provided, and which the said bank, on its part and behalf, by virtue of its said organization, became obligated and liable to pay, and thereafter continued to pay to the said State of Ohio, as in said several acts provided.

And your orator says, that under and by virtue of the said several acts aforesaid, said branch, as such incorporated body, was relieved and exempted from the payment of any taxes or assessments, by any existing or future law of said State, except such only as it was required to pay by the 60th section of said act of said 24th day of February, A. D. 1845, by which said 60th section it was provided, "That each banking company, organized under this act, or accepting thereof and complying with its provisions, shall, semi-annually, on the days designated in the fifty-ninth section for declaring dividends, set off to the State six per centum on the profits, deducting therefrom the expenses and ascertained losses of the company for the six months next preceding, which sum or amount so set off shall be in lieu of all taxes for which such company, or the stockholders thereof, on account of stock owned therein, would otherwise be subject; and the cashier shall, within ten days thereafter, inform the auditor of State of the amount so set off, and shall pay the same to the treasurer of State, on the order of said auditor; but, in computing the profits of the company for the purposes aforesaid, the interest received on the certificates of the funded debt of this State, held by the company, or deposited with and transferred to the treasurer of State, or to the board of control, by such company, shall not be taken into the account."

Your orator further represents, that the said Summit County Bank at Cuyahoga Falls, immediately upon becoming incorporated as such banking company in manner aforesaid, commenced said business of banking at said Cuyahoga Falls under and by virtue of said acts, and from thence hitherto, at, and until the filing hereof, has continued to prosecute and carry on said business pursuant to the provisions of said acts, in all things abiding by and conforming thereto; and that in conformity to the 60th section of said first mentioned act, said bank, by its cashier, on the first Mondays of May and November, in each and every year since its incorporation, has continued to set off, when profits have accrued to said bank in said business, to said State of Ohio, six per centum on the profits of the company for six months next preceding said first Mondays of May and November in each year, deducting as therein in said section provided, and that the cashier of said bank has continued to notify and inform the auditor of said State of Ohio of each and every amount so set off, and has at all times paid the same to the Treasurer of State when required so to do by the order of said auditor.

Your orator further represents, that at the times of the passing of the several acts hereinbefore referred to by the General Assembly of said State of Ohio, and at the time of the organization and incorporation of said branch, the people of said State of Ohio, as well as the legislature thereof, were acting under and governed by the constitution of said State, adopted and ratified in due form at Chilicothe, in said State, on the 29th day of November, A. D. 1802, as the paramount and organic law of said State (to which said constitution said orator refers and makes the same a part of this his bill of complaint), under and by virtue of which said constitution said General Assembly of the State of Ohio had full and ample authority to pass and enact said several acts, and to enter into and render binding upon the people, and all succeeding legislatures of said State, the contract between said State and the said branch (as well as other branches) in the manner hereinbefore specified.

Your orator further says, that in and by the 16th section of the 8th article of said constitution, it is among other things provided: "That no *ex post facto* law, nor any law impairing the validity of contracts, shall ever be made;" and that in and by the tenth section of the first article of the Constitution of the United States, it is among other things provided, that "no State shall pass any *ex post facto* law, or law impairing the obligation of contracts."

Your orator further says, that in and by the section second of the 12th article of the present constitution of said State of Ohio, which was in full force and obligatory upon the legislature of said State at the time of the passage of the act hereinafter referred to, to wit, on the 5th day of April, A. D. 1859, and which your orator hereby mades part of this petition, it is provided that "laws shall be passed taxing by a uniform rule all moneys, credits, investments in bonds, stocks, joint-stock companies, or otherwise, and also all real and personal property according to its true value in money;" yet notwithstanding the premises the said State of Ohio, in utter disregard and violation of said provisions of the Constitution of the United States and of the constitution of the said State of Ohio, and in utter disregard of the rights and franchises of said branch under and by virtue of said acts as such corporation and the contract between said branch and said State as hereinbefore stated, and to the great damage and injury to said branch and your orator as stockholder therein in the premises, heretofore, to wit, on the 5th day of April, A. D. 1859, by its General Assembly, the State of Ohio, under the forms of law, passed and enacted a certain other act, to which your orator also refers and makes it a part of this his bill of complaint, entitled "An act for the assessment and taxation of all property in this State and for leving taxes thereon, according to its true value in money," by which said act, it was, amongst other things, provided—

"Section 60. That it shall be the duty of the President and

cashier of every bank or banking company that shall have been or may hereafter be incorporated by the laws of this State, and having the right to issue bills for circulation as money, to make out and return under oath in the manner hereinafter directed, during the month of May, annually, a written statement containing—1st. The average amount of notes and bills discounted or purchased by said bank or banking company; which amount shall include all of the loans or discounts of such bank or banking company, whether originally made or renewed during the year aforesaid, or at any time previous, whether made on bills of exchange, notes, bonds, mortgages, or any other evidence of indebtedness (at their actual value in money, whether previous to, during, or after the period aforesaid, and on which such bank or banking company has at any time reserved or received or is entitled to receive any profits or other consideration whatever, either in the shape of interest, discount, exchange, or otherwise.

"2d. The average amount of moneys, effects, or dues of every description, belonging to such bank or banking company, loaned, invested, or otherwise employed or used with a view to profit, or upon which such bank or banking company receives or is entitled to receive interest; provided, however, that the average amount of the specie funds of every such bank kept on hand unemployed, except with a view of redeeming its circulation and meeting its accruing liabilities to depositors, and also the average amount of the balances due from other banks upon which no interest, profit, or consideration is reserved or received, shall be excluded in the above estimate of the taxable property of each bank required to be made and returned as aforesaid.

"Section 61. To ascertain the amount of notes and bills discounted and purchased, and all other moneys, effects, or dues of every description, belonging to such bank or banking company, loaned, invested, or otherwise used or employed with a view to profit, or upon which such bank or banking company receives or is entitled to receive interest, to be returned as aforesaid, there shall be taken as a criterion the average amount of the aforesaid items for each month during the year next previous to the time of making such statement, if so so long such bank or banking company shall have been engaged in business, and if not, then during such time as such bank or banking company shall have been engaged in business, and the average shall be made by adding together the amount so found belonging to such bank or banking company in each month so engaged in business, and dividing the same by the number of months so added together.

"Section 63. The president and cashier of every bank organized under 'An act to incorporate the State Bank of Ohio and other banking companies,' passed February 24th, 1845, shall during the month of May, in each and every year, make the written statement required by the sixtieth and sixty-first sections of this act to the auditor of State. In case the president and cashier refuse or omit

to make such statement, the auditor of State shall ascertain the amount so required to be returned by the president and cashier from the last quarterly returns made by such bank to his office, to which sum he shall add fifty per cent. The auditor of State shall proceed to assess thereupon the amount of taxes for the various purposes assessed upon property in the locality where said bank has its office, of which assessment the auditor shall give notice to the president and cashier of any such bank. On the 20th day of December in each year it shall be the duty of the comptroller to draw in favor of the treasurer of State upon each and every such banking company for the amount of taxes so assessed, which draft it shall be the duty of the said president or cashier to pay forthwith into the State treasury.

"Section 64. In default of any such president and cashier to pay the amount of the said draft to the treasurer of State at his office on or before the thirty-first of December in any year, the treasurer of State shall immediately notify the attorney general thereof, who shall thereupon proceed in the Supreme Court of the State against the said president and cashier by mandamus to compel the payment of the said taxes, and it shall be the duty of the said court to allow the said writ; or the attorney general may also at his option commence a civil action against the president and directors of said company in the Court of Common Pleas or Superior Court of Franklin County, in the name of the State, for the amount of such taxes.

"Section 65. All taxes so paid or collected by the State Treasurer shall be distributed by the auditor of State in the proportion to which the several counties, townships, or other local organizations are entitled."

By virtue of the last mentioned act, which still remains in full force and unrepealed, and in violation of the Constitution of the United States and of the said State of Ohio, it was attempted by the General Assemby of the State of Ohio to deprive said branch (as well as your orator) and all other banking companies, organized under said act, passed on the 24th day of February, A. D. 1845, of its aforesaid rights, privileges, franchises, and immunities, to which it, by law, was entitled under and by virtue of its corporate capacity, and under and by virtue of the said 60th section of the act of 24th of February, A. D. 1845, and in the place and stead of permitting said branch to continue to pay to said State said sum of six per centum upon its profits, in lieu of all assessments and taxes to be paid by said branch, in the manner in said section provided, undertook to supersede, repeal and render said section inoperative and void, and in violation of its provisions to require and compel said branch by the forms of law to enlist, for the purpose of taxation, the assets and property thereof, in conformity with the provisions of said act of the 5th of April, A. D. 1859.

And your orator says that by force of said last mentioned statute, the General Assembly of said State of Ohio have not only attempted

to change the mode and manner of taxing said branch and the time and manner of paying such taxes, but in addition thereto have attempted to increase and compel said branch to pay by way of taxes each and every year, until the expiration of its charter, a large amount of money over and above the amount which the said branch would otherwise be liable to pay, under and by virtue of the said 60th section of the said act of 24th of February, A. D. 1845, all of which is in violation of said constitution, and greatly to the prejudice and injury not only of said branch in its corporate capacity, but to your orator as a stockholder therein in his private and individual capacity, independent of all other interests in said branch, amongst other things in this, that by the provisions of the said act of 5th of April, A. D. 1859, the taxes of said branch and the amount your orator, as a stockholder therein, would be liable to pay will be increased in more than three-fold proportion over and above the amount they would otherwise be liable to pay, and far exceeding the amount which natural individual persons are liable to pay under the existing laws of that State, upon an equal amount of capital and assets with that of said branch; by reason of which excessive and unequal taxation upon the property and assets of said branch, your orator as a stockholder therein will sustain a great loss and damage by the depreciation of his said stock, and be otherwise prejudiced and damaged by the consequent embarrassment in the further continuance of the business of said branch, and in the gains, profits, and dividends which he would otherwise derive therefrom, as well as other inconvenience and loss, until the expiration of the charter of said bank in A. D. 1866.

And your orator says that in the event that the said provisions of the said act of the 5th of April, A. D. 1859, are permitted to be enforced, he will in his personal and individual capacity as such stockholder be subjected to loss and damage by reason thereof, in more than the sum of two thousand dollars, all of which your orator believes to be contrary to law and equity in the premises.

Your orator also believes, and so charges, that the said act of the 5th of April, A. D. 1859, so far as the same relates or pertains to said branch in its said business of banking, or to the levy and assessment of taxes thereon, or so far as the same in any manner changes, suspends or supersedes the provisions of the said 60th section of the said act of the 24th of February, A. D. 1845, under which said branch became incorporated, is, as applied to said branch and its said business of banking, unconstitutional and void in law, and ought not to be enforced for the reason, amongst other things, that the same is opposed and repugnant to the Constitution of the United States and of the State of Ohio, under which said branch became incorporated, inasmuch as it changes and impairs the obligation of said contract between said branch and said State, and imposes an unequal burthen of taxation upon said branch without its consent thereto.

And your orator further represents and shows to your honors that in compliance with the provisions of said act of April 5th, A. D. 1859, the president and cashier of said Summit County Bank, at Cuyahoga Falls, without the knowledge or assent of your orator, during the month of May last, made the return to the Auditor of State of all the assets of said bank as required by said act of April 5, A. D. 1859. And your orator charges the fact to be that the said Francis M. Wright, Auditor of the State of Ohio, whose duty it is made, under and by virtue of said last named act, to assess and levy a tax upon the returns so made to him, for all purposes to which taxes are assessed upon property in the said town of Cuyahoga Falls, where said bank is doing business, has already proceeded to levy and assess such tax upon the return of said bank so made as aforesaid, and that unless restrained by the injunction of this honorable court he will proceed to execute and perform all and singular the other matters and things enjoined upon him by said act and to collect said tax in the manner therein specified. And your orator, ascertaining that the said president and cashier had made returns of the assets of said bank to the Auditor of State, in compliance with said act of April 5th, 1859, has urged upon them and upon the directors of said Summit County Bank, at Cuyahoga Falls, to take measures to prevent the further enforcement of said law, and the great injustice which would result from the assessment and collection of the tax in the manner prescribed therein; but the said directors and officers of said bank utterly refuse in any manner to interfere to resist or prevent the collection of said tax. And your orator is advised that he has no adequate remedy at law for all the injuries and losses with which he is threatened in this respect, but that he can only have full and complete remedy by injunction and proceedings in this honorable court.

Your orator further shows that the said bank, at all times, in all respects has complied with the law under which it exists and became incorporated, and especially has it complied with so much of it as respects the setting apart for the Auditor of State taxes from time to time, as it has declared dividends, and that on the 2d day of May last, it set apart to the credit of the auditor of State eight hundred dollars, and notified the auditor of the State of Ohio accordingly.

That in November last said bank made no dividend.

Your orator further states that William B. Thrall is and holds the office of Comptroller of the Treasury for said State of Ohio. That under the provisions of said act of April 5th, 1859, it is made the duty of said Comptroller on the 20th day of December in each year to draw in favor of the Treasurer of State upon each banking company for the amount of taxes so assessed, which draft said act makes it the duty of the president of cashier to pay forthwith into the State treasury; and your orator states that if in fact said auditor has made such assessment, it will, on or about 20th day of the month of December, 1859, become the duty of the said William B.

Thrall, as such comptroller, to draw upon the president and cashier of said bank for the sum so taxed to the said bank and levied upon it thus illegally; and he says he has good reason to believe, and charges, that said William B. Thrall will draw upon said bank for the amount aforesaid, and that he threatens so to do, and he has fears and believes said bank will pay such draft, pursuant to the requirements of said act of April 5, 1859, and by that means procure and receive from said bank said sum so illegally levied and assessed upon said bank. That such sum so illegally assessed is not less than $1,091 92, as will appear by the letter of said Auditor of State, hereto attached and marked "A;" and your orator states that he has no reasonable doubt but that said comptroller will immediately proceed, and he charges that he will so proceed to collect such tax from said bank, in accordance with the provisions of said act of April 5, 1859, unless restrained from so doing by the order of this court.

Your orator further represents, that if the property and assets of said bank are permitted to be taxed, assessed and collected as aforesaid, the taxes so levied will be so onerous, oppressive, unequal and unjust, that they will compel a cessation and final suspension of its said business of banking, in violation of its said rights and franchises, and that the injury which said branch will sustain by reason of such assessment and the collection thereof will be irreparable.

Your orator further says, that having applied to the president and cashier, directors and officers of said bank, to attempt a resistance to the collection of said tax, and they having refused as hereinbefore stated, he has no remedy adequate at law and can only be assisted by this honorable court sitting as a court of chancery, and enjoining the defendants from the collection and payment of such tax.

Your orator further says, that Alfred P. Stone is treasurer of the State of Ohio, and will, unless restrained by the order of this court, hand over any draft that may be drawn on said bank, if the same should not be paid to the attorney-general for collection.

Your orator, therefore, prays that the writ of subpœna, or other process of this honorable court, may issue against the said Francis M. Wright, as auditor of the State of Ohio, said William B. Thrall, as comptroller of the treasury of the State of Ohio, and the said Alfred P. Stone, as treasurer of the State of Ohio, and the said Summit County Bank at Cuyahoga Falls, that said bank may be restrained from paying the draft of said comptroller for said taxes, or otherwise paying the said taxes. That the said Wright, as such auditor, may be restrained from proceeding any further in regard to the assessment so made as aforesaid, and from delivering the same to the said comptroller or to the treasurer of State for collection under the provisions of said act of April 5, 1859, and that said comptroller may be restrained from drawing for such taxes upon the president or cashier of said bank, or from otherwise collecting or attempting to collect the same under the provisions of the act last aforesaid. That said Stone may be restrained from handing over any

draft drawn on said bank for taxes under said act of April 5, 1859, to the attorney-general for collection under said law. And that they, each and all, be restrained, as aforesaid, and enjoined from carrying into effect in any manner the provisions of said act of April 5th, 1859, so far as the same applies to the assessment and collection of taxes against said bank, until the further order of this court; and that, on the final hearing hereof, said injunction may be made perpetual against said auditor, treasurer, and comptroller during their continuance in office, and also against said bank. And that your orator may have such other and further relief in the premises as to this court may seem meet and equitable.

By RANNEY, BACKUS & NOBLE,
Complainant's Sol'rs.

United States of America, Northern District of Ohio, *ss.*

Elisha N. Sill, being sworn, says, he is the attorney in fact and agent of William F. A. Sill, the complainant above named, that he has heard said bill read, and that the matters therein stated are, of his own knowledge, true in substance and in fact, except such as are therein stated upon belief of complainant, and such matters he believes to be true. E. N. SILL.

Sworn to and subscribed before me, December 17th, 1859.
F. W. GREEN, Clerk.

Exhibit A.

(Referred to in the foregoing bill.)

Auditor of State's Office, Columbus, O., Nov. 28, 1859.

Cashier Summit Co. Br. Bank, Cuyahoga Falls, O.

Sir: You are hereby notified, that in pursuance of the provisions of the 63d section of "An act for the assessment and taxation of all property in this State, and for levying taxes thereon according to its true value in money," I have assessed upon the property reported by you, in accordance with the requirements of the 60th and 61st sections of the above recited act, as employed in the business of banking, the rate of $9\frac{85}{100}$ mills on each dollar, that being the rate per cent. levied upon all other property in the locality where your bank is situated, amounting in the aggregate to $1091 92.

Respectfully, yours,
F. M. WRIGHT, Auditor.

And afterwards, to wit, on the nineteenth day of December, A. D. 1859, the said Summitt County Bank at Cuyahoga Falls, Francis M. Wright, Auditor of State, William B. Thrall, Comptroller of the Treasury, and Alfred P. Stone, Treasurer of the State of Ohio, acknowledged service upon them of notice of the application for the allowance of an injunction as prayed for in said bill.

And thereupon, on said 19th day of December, the following entry was made on the journal of the proceeding of said court.

WILLIAM F. A. SILL vs. FRANCIS M. WRIGHT, Aud. of State, et als., THE SUMMITT COUNTY BANK at Cuyahoga Falls.	No. 830. In Chancery.

(Allowance of Injunction.)

On motion of the complainant, by his solicitors, it is ordered, that an injunction be allowed in this case, according to the prayer of the bill, to be continued until the further order of the court, on complainant's filing a bond with security, to the satisfaction of the clerk, in the sum of ten thousand dollars, conditioned for the payment of all moneys and costs which may be adjudged against the complainant in case said injunction shall be dissolved.

And thereupon the said complainant filed in the clerk's office of said court a bond in the words following, to wit:—

(Injunction Bond.)

Know all men by these presents, that I, Elisha N. Sill, am held and firmly bound unto Francis M. Wright, Auditor of State of the State of Ohio, William B. Thrall, Comptroller of the Treasury of the State of Ohio, Alfred P. Stone, Treasurer of State of the State of Ohio, and the Summitt County Branch at Cuyahoga Falls, in the sum of ten thousand dollars, to the payment of which I bind myself, my heirs, executors, and administrators, firmly by these presents. Sealed with my seal, and dated this nineteenth day of December, A. D. 1859.

The condition of the above obligation is such, that whereas William F. A. Sill has obtained an allowance of an injunction in the Circuit Court of the United States for the Northern District of Ohio, to restrain the said Francis M. Wright, as such Auditor of State of the State of Ohio, from proceeding any further in regard to the assessment of taxes made against the Summitt County Bank at Cuyahoga Falls, under and by virtue of the act of the General Assembly of the State of Ohio, passed April 5th, 1859, entitled "An act for the assessment and taxation of all property in this State, and for levying taxes thereon according to its true value in money," and from delivering the said assessment to the Comptroller of the Treasury, or to the Treasurer of State for collection; and to restrain the said William B. Thrall, as such Comptroller of the Treasury of the said State of Ohio, from drawing for such taxes upon the President or Cashier of said Bank, or from otherwise collecting or attempting to collect the same under the provisions of said act of April 5, 1859; and to restrain the said Alfred P. Stone, as such Treasurer of State of the State of Ohio, from handing over any draft drawn on said bank for taxes under said act of April 5th, 1859,

to the attorney general of the said State of Ohio for collection; and to restrain each and all of said officers from carrying into effect, in any manner, the provisions of said act of April 5th, 1859, so far as the same applies to the assessment and collection of taxes against said bank; and also to restrain the said Summitt County Bank at Cuyahoga Falls from paying the draft of the said comptroller for said taxes, or otherwise paying the said taxes, until the further order of said court.

Now if the said William F. A. Sill shall abide the decision of said court, and pay all moneys and costs which shall be adjudged against him in case the said injunction shall be dissolved, then these presents shall be void, otherwise to remain in full force.

E. N. SILL. [SEAL.]

Subscribed and sealed in presence of
F. W. GREEN.

Endorsed on said bond: Filed and approved Dec. 19, 1859.
F. W. GREEN, Cl'k.

On the filing of said bond and on said nineteenth day of December aforesaid, the following writs of subpœna and writs of injunction were issued by the clerk of said court, viz:—

(Subpœna to N. District.)

The United States of America, Northern District of Ohio, *ss.*

The President of the United States of America to the Marshal of the Northern District of Ohio, greeting:—

You are hereby commanded to summon Francis M. Wright, Auditor of State of the State of Ohio, William B. Thrall, Comptroller of the Treasury of the State of Ohio, Alfred P. Stone, Treasurer of the State of Ohio, and the Summitt County Bank, at Cuyahoga Falls, if they be found in your District, to be and appear in the Circuit Court of the United States for the Northern District of Ohio aforesaid, at Cleveland, on the first Monday in February next, to answer a certain bill in chancery filed and exhibited in said court against them, by William F. A. Sill (on which an injunction has been allowed). Hereof they are not to fail under the penalty of the law thence ensuing, and have you then and there this writ.

Witness the Honorable Roger B. Taney, Chief Justice of the United States, this 19th day of December, A. D. 1859, and in the 84th year of the independence of the United States of America.

[SEAL.] F. W. GREEN, Clerk.

Memorandum.—The said defendants are required to enter their appearance in this suit in the clerk's office of said court on or before the first Monday of February, 1860, otherwise the said bill may be taken *pro confesso.* F. W. GREEN, Clerk.

(Service of Subpœna.)

The following was endorsed on said subpœna: "We acknowledge

ourselves security for all costs for which the plaintiff may be liable in this suit. RANEY, BACKUS & NOBLE.

The following acceptance of service was also endorsed on said subpœna: "Dec. 19, 1859. I hereby accept service of the within subpœna, and also the service of the injunction in this case.

E. N. SILL, Pres. Summitt Co. Bank.

Filed and returned Dec. 19, 1859.

F. W. GREEN, Clerk.

(Writ of Injunction.)

United States of America, Northern District of Ohio, *ss.*

The President of the United States of America to Francis M. Wright, Auditor of State of the State of Ohio, William B. Thrall, Comptroller of the Treasury of the State of Ohio, Alfred P. Stone, Treasurer of State of the State of Ohio, and the Summitt County Bank, at Cuyahoga Falls, your clerks, servants, and agents, to each and every of you, greeting:

Whereas William F. A. Sill, a citizen of the State of Connecticut, has filed on the chancery side of the Circuit Court of the United States, for the Northern District of Ohio, his bill against the said Francis M. Wright, Auditor of State of the State of Ohio, William B. Thrall, Comptroller of the Treasury of the State of Ohio, Alfred P. Stone, Treasurer of State of the State of Ohio, and the Summitt County Bank, at Cuyahoga Falls, amongst other things praying for an injunction to restrain the said Francis M. Wright, as such Auditor of State, from proceeding any further in regard to the assessment of taxes made against the said Summitt County Bank, at Cuyahoga Falls, under and by virtue of the act of the General Assembly of the State of Ohio, passed April 5, 1859, entitled "An act for the assessment and taxation of all property in this State, and for levying taxes thereon according to its true value in money," and from delivering the said assessment to the Comptroller of the Treasury or to the Treasurer of State, for collection, and to restrain the said William B. Thrall as such Comptroller of the Treasury from drawing for such taxes upon the president or cashier of said Summitt County Bank, at Cuyahoga Falls, or from otherwise collecting or attempting to collect the same under the provisions of said act of April 5, 1859; and to restrain the said Alfred P. Stone as such Treasurer of State from handing over any draft drawn on said Summit County Bank, for taxes under said act of April 5, 1859, to the Attorney General of the said State of Ohio, for collection. And to restrain each and all of said officers from carrying into effect in any manner the provisions of said act of April 5, 1859, so far as the same applies to the assessment and collection of taxes against said bank until the further order of said court, and also to restrain the said Summitt County Bank at Cuyahoga Falls from paying the draft of the said Comptroller for said taxes, or otherwise paying the said taxes, until the further order of said court.

We, having regard for the matters aforesaid, do hereby command and strictly enjoin you, the said Francis M. Wright, as such Auditor of State of the State of Ohio, from proceeding any further in regard to the assessment of taxes made against the said Summitt County Bank at Cuyahoga Falls, under and by virtue of the act of the General Assembly of the State of Ohio, passed April 5, 1859, entitled "An act for the assessment and taxation of all property in this State, and for levying taxes thereon according to its true value in money," and from delivering the said assessment to the Comptroller of the Treasury or to the Treasurer of State for collection; and do enjoin you, the said William B. Thrall, as such Comptroller of the Treasury, from drawing for such taxes upon the President or Cashier of said Summitt County Bank, at Cuyahoga Falls, or otherwise collecting or attempting to collect the same under the provisions of said act of April 5, 1859; and do enjoin you, the said Alfred P. Stone, as such Treasurer of State, from handing over any draft drawn on said Summitt County Bank for taxes under said act of April 5th, 1859, to the Attorney General of the said State of Ohio for collection; and do strictly enjoin each and every of you, the said officers, from carrying into effect in any manner the provisions of said act of April 5, 1859, so far as the same applies to the assessment and collection of taxes against said bank; and do enjoin you, the said Summitt County Bank at Cuyahoga Falls, from paying the draft of the said comptroller for said taxes, or otherwise paying the said taxes.

Which commands and injunctions you are respectively required to observe and obey until our said Circuit Court shall make further order in the premises. Hereof fail not under the penalty of the law thence ensuing.

Witness the Honorable Roger B. Taney, Chief Justice of the United States, this nineteenth day of December, in the year of our Lord one thousand eight hundred and fifty-nine, and of the Independence of the United States of America the eighty-fourth.

[SEAL.] F. W. GREEN, Clerk.

Endorsed on said writ the following:—

Returned and filed Dec. 19, 1859. F. W. GREEN, Clerk.

(Service.)

"Service accepted: see subpœna."

The said defendants, the officers of State of the State of Ohio, being residents of the Southern District of Ohio, the following duplicate writs were issued to the marshal of said Southern District in pursuance of the act of Congress in such case made and provided.

(Subpœna to Sou. District.)

The United States of America, Northern District of Ohio, *ss.*

The President of the United States of America to the Marshal of the Southern District of Ohio, greeting:

You are hereby commanded to summon Francis M. Wright, Au-

ditor of State of the State of Ohio, William B. Thrall, Comptroller of the Treasury of the State of Ohio, Alfred P. Stone, Treasurer of the State of Ohio, and the Summitt County Bank at Cuyahoga Falls, if they be found in your district, to be and appear in the Circuit Court of the United States for the Northern District of Ohio aforesaid, at Cleveland, on the first Monday in February next, to answer a certain bill in Chancery filed and exhibited in said court against them by William F. A. Sill (on which an injunction has been allowed). Hereof they are not to fail under the penalty of the law thence ensuing. And have you then and there this writ.

Witness the Honorable Roger B. Taney, Chief Justice of the United States, this nineteenth day of December, A. D. 1859, and in the 84th year of the Independence of the United States of America.

[SEAL.] F. W. GREEN, Clerk.

(Mem'm.)

Memorandum.

The said defendants are required to enter their appearance in this suit in the clerk's office of said court, on or before the first Monday of February, 1860, otherwise the said bill may be taken pro confesso. F. W. GREEN, Clerk.

Endorsed on said subpœna was the following:—

I hereby certify this to be a true copy of a writ sued out of the Circuit Court of the United States for the Northern District of Ohio. F. W. GREEN, Clerk.

(Security for Costs.)

"We acknowledge ourselves security for all costs for which the plaintiff may be liable in this suit.

RAMSEY, BACKUS & NOBLE.

Said subpœna was returned to said clerk's office on the 22d day of December, 1859, with the following return of service endorsed thereon:—

(Service of Subpœna.)

December 20th, 1859.

I have served this writ on Francis M. Wright, Auditor, Alfred P. Stone, Treasurer, and William B. Thrall, Comptroller, by delivering certified copies to each personally.

LEWIS W. SIFFORD, U. S. Marshal,
By J. K. LOWE, Dept. U. S. Marshal.

Fees.	
3 services	$6 00
Mileage, 135 m.	8 10
3 copies	1 50
	$15 60

(Writ of Injunction.)

The United States of America, Northern District of Ohio, *ss.*

The President of the United States of America, to Francis M. Wright, Auditor of State of the State of Ohio; William B. Thrall, Comptroller of the Treasury of the State of Ohio; Alfred P. Stone, Treasurer of State of the State of Ohio; and the Summit County Bank, at Cuyahoga Falls. Your clerks, servants, and agents, to each and every of you, greeting:—

Whereas, William F. A. Sill, a citizen of the State of Connecticut, has filed on the Chancery side of the Circuit Court of the United States, for the Northern District of Ohio, his bill against the said Francis M. Wright, Auditor of State of the State of Ohio, William B. Thrall, Comptroller of the Treasury of the State of Ohio, Alfred P. Stone, Treasurer of State of the State of Ohio, and the Summit County Bank, at Cuyahoga Falls, amongst other things, praying for an injunction to restrain the said Francis M. Wright, as such Auditor of State, from proceeding any further in regard to the assessment of taxes made against the said Summitt County Bank, at Cuyahoga Falls, under and by virtue of the act of the General Assembly of the State of Ohio, passed April 5, 1859, entitled, "An act for the assessment and taxation of all property in this State, and for levying taxes thereon according to its true value in money," and from delivering the said assessment to the comptroller of the treasury, or to the treasurer of State for collection, and to restrain the said William B. Thrall, as such comptroller of the treasury, from drawing for such taxes upon the president or cashier of said Summitt County Bank, at Cuyahoga Falls, or from otherwise collecting or attempting to collect the same under the provisions of said act of April 5, 1859. And to restrain the said Alfred P. Stone, as such treasurer of State, from handing over any draft drawn on said Summitt County Bank, for taxes under said act of April 5, 1859, to the attorney-general of the said State of Ohio, for collection, and to restrain each and all of said officers from carrying into effect in any manner the provisions of said act of April 5, 1859, so far as the same applies to the assessment and collection of taxes against said bank, until the further order of said court. And also to restrain the said Summitt County Bank, at Cuyahoga Falls, from paying the draft of the said comptroller for said taxes, or otherwise paying the said taxes until the further order of said court.

We, having regard to the matters aforesaid, do hereby command and strictly enjoin you, the said Francis M. Wright, as such auditor of State of the State of Ohio, from proceeding any further in regard to the assessment of taxes made against the said Summit County Bank, at Cuyahoga Falls, under and by virtue of the act of the General Assembly of the State of Ohio, passed April 5, 1859, entitled, "An act for the assessment and taxation of all property in

this State, and for levying taxes thereon according to its true value in money," and from delivering said assessment to the comptroller of the treasury for collection.

And do enjoin you, the said William B. Thrall, as such comptroller of the treasury, from drawing for such taxes upon the president or cashier of said Summitt County Bank, at Cuyahoga Falls, or otherwise collecting or attempting to collect the same under the provisions of said act of April 5, 1859.

And do enjoin you, the said Alfred P. Stone, as such treasurer of State, from handing over any draft drawn on said Summitt County Bank, for taxes under said act of April 5, 1859, to the attorney-general of the said State of Ohio for collection.

And do strictly enjoin each and all of you, the said officers, from carrying into effect in any manner the provisions of said act of April 5, 1859, so far as the same applies to the assessment and collection of taxes against said bank.

And do enjoin the said Summitt County Bank, at Cuyahoga Falls, from paying the draft of the said comptroller for said taxes, or otherwise paying the said taxes.

Which commands and injunctions you are respectively required to observe and obey until our said Circuit Court shall make further order in the premises.

Hereof fail not under the penalty of the law thence ensuing.

Witness the Honorable Roger B. Taney, Chief Justice of the United States, this nineteenth day of December, in the year of our Lord one thousand eight hundred and fifty-nine, and of the independence of the United States the 84th.

[SEAL.] F. W. GREEN, Clerk.

I certify this to be a true copy of a writ sued out of the Circuit Court of the United States for the Northern District of Ohio.

F. W. GREEN, Clerk.

On the 22d day of December, 1859, said writ of injunction was returned to the clerk's office of said court with the following return of service endorsed thereon:—

(Service of Injunction.)

"December 20th, 1859.

I have served this writ on Francis M. Wright, auditor, Alfred P. Stone, treasurer, and William B. Thrall, comptroller, by delivering certified copies to each personally.

LEWIS W. SIFFORD, U. S. Marshal,
By J. K. LOWE, Dep'ty U. S. Marshal.

3 services,	$6 00.
3 copies,	1 50.
150 m'ls travel,	8 10.
	$15 60.

And afterwards, to wit, on the twenty-fourth day of December, A. D. 1859, came the said defendants by C. P. Wolcott, Esq., att'y-general of the State of Ohio, their solicitor, and filed in the clerk's office of said a demurrer to the said complainant's bill, which said demurrer is in the words following, to wit:—

(Demurrer.)

The said defendants demur to the said bill of complaint, and for cause of demurrer show that the said complainant hath not in and by his said bill made such a case as entitles him to the discovery and relief therein prayed for as against these defendants; wherefore the said defendants pray judgment whether they shall be compelled to make any other answer thereto, and that they may be hence dismissed with their costs. C. P. WOLCOTT, Att'y-Gen'l.

And afterwards, at the March and July terms of said court this case was continued.

And afterwards, at the November stated term of said court, in the year A. D. 1860, to wit, on the 18th day of January, A. D. 1861, the following entry was made in the journal of the proceedings of said court:—

WILLIAM F. A. SILL vs. FRANCIS M. WRIGHT, Auditor of State; WILLIAM B. THRALL, Comptroller; ALFRED P. STONE, Treasurer; and THE SUMMITT COUNTY BANK.	}	No. 830. In Chancery.

The cause came on to be heard upon the demurrer of the defendants to the complainant's bill and was argued by counsel. Whereupon it is considered by the court that the said demurrer be and the same is hereby overruled, and thereupon the said defendants by their solicitor waive the right to further plead or answer to said bill.

Thereupon this cause came on to be further heard upon the complainant's bill, and it appearing to the court that the said defendants have been severally served with process and have severally failed to plead or answer to the said bill, the same is by direction of the court taken as true and confessed as against the said defendants. Whereupon the court find the allegations in the said bill to be true, and that the equity of the case is with the complainant. The court further find that the act of the General Assembly of the State of Ohio, passed April 5th, 1859, entitled "An act for the assessment and taxation of all property in this State, and for levying taxes thereon according to its true value in money," so far as the same in any manner changes, suspends or supersedes the sixtieth (60th) section of the act of the General Assembly of the State of Ohio, passed February

twenty-fourth (24th), eighteen hundred and forty-five (1845), entitled "An act to incorporate the State Bank of Ohio and other banking companies," under which the said Summitt County Bank, at Cuyahoga Falls, was incorporated, and taxes said bank in a different manner and in a different and larger amount than is provided in said 60th section, is in violation of the Constitution of the United States, and void.

It is therefore ordered, adjudged, and decreed, that the injunction herein allowed by the court be and the same is hereby made perpetual; that the said Francis M. Wright, Auditor of State as aforesaid, and his successors in office, be and they are hereby forever enjoined from proceeding any further in regard to the assessment of taxes made against the said Summitt County Bank, at Cuyahoga Falls, under and by virtue of the said act of the General Assembly of the State of Ohio, of April 5, 1859, and from delivering the said assessment to the Comptroller of the Treasury or to the Treasurer of State for collection. And that the said William B. Thrall, as such Comptroller of the Treasury, be forever enjoined from drawing for such taxes upon the president or cashier of said Summitt County Bank, at Cuyahoga Falls, or otherwise collecting or attempting to collect the same under the provisions of said act of April 5th, 1859.

That the said Alfred P. Stone, as such Treasurer of State, and his successors in office, be and they are hereby forever enjoined from handing over any draft drawn on said Summitt County Bank for taxes under said act of April 5, 1859, to the Attorney General of the State of Ohio for collection. And that each and every of said State officers and their successors in office be forever enjoined from carrying into effect in any manner the provisions of said act of April 5, 1859, so far as the same applies to the assessment and collection of taxes against said bank. And that said Summitt County Bank, at Cuyahoga Falls, be forever enjoined from paying the draft of the said comptroller for said taxes or otherwise paying the said taxes.

It is further ordered, that the said Francis M. Wright, as such Auditor, William B. Thrall, as Comptroller of the Treasury, and Alfred P. Stone, as Treasurer of State, pay all the taxed costs of this proceeding within ten days from the entering of this decree, in default of which payment execution may issue for the collection of the same, as on judgments at law.

And thereupon came the said defendants, Francis M. Wright, Auditor of State, William B. Thrall, Comptroller, and Alfred P. Stone, Treasurer, as aforesaid, by James Murray, their solicitor, and from said decree pray an appeal to the Supreme Court of the United States, and the court being satisfied that the amount in controversy exceeds the sum of two thousand dollars, the same is allowed on the said appellants filing an appeal bond in the sum of five hundred dollars to the satisfaction of the clerk of this court.

And afterwards, on the twenty-sixth day of January, A. D. 1861,

the said appellants filed in the clerk's office of said court their appeal bond, which said bond is in the words and figures following, to wit:—

Circuit Court of the United States, for the Northern District of Ohio.

ALFRED P. STONE, Treasurer of the State of Ohio, WILLIAM B. THRALL, Comptroller, and FRANCIS M. WRIGHT, Auditor of State, Appellants,
vs.
WILLIAM F. A. SILL.
} In Chancery.

Know all men by these presents that we, Wm. B. Thrall and Robert W. Taylor, are held and firmly bound unto the above named Wm. F. A. Sill in the sum of five hundred dollars, to be paid to the said appellee, for the payment of which well and truly to be made, we bind ourselves and each of us, and our heirs, executors, administrators, jointly and severally firmly by these presents, sealed with our seals, and dated the 24th day of January, in the year one thousand eight hundred and sixty-one.

Whereas, the above named Alfred P. Stone, as Treasurer of the State of Ohio, William B. Thrall, as Comptroller, and Francis M. Wright, as Auditor of State, appellants, have prosecuted an appeal to the Supreme Court of the United States at the City of Washington, in the District of Columbia, to reverse the decree rendered in the suit in chancery, wherein William F. A. Sill is complainant, and Alfred P. Stone, Treasurer of the State of Ohio, William B. Thrall, Comptroller, Francis M. Wright, Auditor of State, and Summitt County Branch State Bank of Ohio, are defendants, by the Circuit Court of the United States for the Northern District of Ohio.

Now therefore the condition of this obligation is such that if the above named appellants shall prosecute their appeal to effect, and answer any decree for costs if they fail to make their appeal good, then this obligation shall be void, otherwise to remain in full force and effect.

ROBERT M. TAYLOR, [SEAL.]
W. B. THRALL. [SEAL.]

Filed and approved January 26th, 1861.

F. W. GREEN, Clerk.

The United States of America, Northern District of Ohio, *ss.*

I, Frederick W. Green, Clerk of the Circuit Court of the United States, for the Seventh Circuit and Northern District of Ohio, do hereby certify that the writings annexed to this certificate are true

copies of their respective originals on file and remaining of record in my office, in the cause within received.

In testimony whereof, I have caused the seal of said court to be hereunto affixed, at the City of Cleveland in the Northern District of Ohio, in the Seventh Circuit, this twenty-eighth day of January, in the year of our Lord one thousand eight hundred and sixty-one, and of the Independence of the United States of America the eighty-fifth.

[SEAL.] F. W. GREEN, Clerk.

Filed 31 January, 1861.

1967

SUPREME COURT OF THE UNITED STATES.

No. ~~206~~ 246. 121.

WILLIAM PATTERSON, PLAINTIFF IN ERROR,

vs.

A. CORWITH & CO.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES, FOR THE DISTRICT OF IOWA.

GIDEON, Printer, 511 Ninth Street, Washington, D. C.

616.121

1971

SUPREME COURT OF THE UNITED STATES.

No. 306.

WILLIAM PATTERSON, PLAINTIFF IN ERROR,

vs.

A. CORWITH & CO.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES, FOR THE DISTRICT OF IOWA.

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GIDEON, Print.

Pleas before the District Court of the United States within and for the District of Iowa, Southern Division, before the Honorable James M. Love, Judge of the said District Court, on the 24th day of March, in the year of our Lord one thousand eight hundred and sixty.

Be it remembered, that heretofore, to wit, on the 5th day of March, in the year of our Lord one thousand eight hundred and sixty, N. Corwith & Co., a partnership of that name and style, filed in the Clerk's Office of said court, at Keokuk, in the southern division of said district, their petition against William Patterson, in the words and figures following, to wit:

N. CORWITH & Co. vs. WM. PATTERSON.	To the District Court of the United States for the State of Iowa, Southern Division.

Your petitioners, N. Corwith & Co., a partnership firm of that name and style, doing business in the State of Illinois, and citizens of said State, claim of the defendant, William Patterson, a citizen of the State of Iowa, the sum of two thousand dollars, and for cause of such claim state that one R. P. Creel, on the 3d day of August, A. D. 1858, executed and delivered his promissory note, in writing, to the defendant, William Patterson, payable to the order of said Patterson, dated August 3d, 1858, and due one year after date, for the sum of thirteen hundred seventy-five dollars, with ten per cent. per annum interest from date. A copy of said note is herewith filed, and made part of this petition.

Plaintiff says said defendant, William Patterson, for a valuable consideration, endorsed and delivered said note to plaintiffs, thereby ordering the money in said note contained to be paid to the plaintiffs.

Plaintiffs say, at maturity the said note was duly presented for payment, and the same being refused, was protested for non-payment, due notice of which said Patterson received.

Plaintiffs say no part of said note has been paid, although long since due, and by non-payment of the same at maturity, the said defendant, William Patterson, has become liable to the plaintiffs to pay the same. They therefore pray judgment against said defendant, William Patterson, for the above amount, with interest and costs.

RANKIN, MILLER & EUSTER,
Pl'ff's Att'ys.

[REC. CCCVI., D. T., 1860.]—1

[Copy of Note.]

$1375. Keokuk, Aug. 3d, 1858.

One year after date, I promise to pay to the order of William Patterson, thirteen hundred and seventy-five dollars, for value received, with interest from date, at ten per cent. per annum.

Aug. 3–6. R. P. CREEL.

[Protested for non-payment, August 6th, 1859, by R. B. Foote, Notary Public.]

Endorsement:—Pay to the order of N. Corwith & Co.

WILLIAM PATTERSON.

And afterwards, to wit, on the 6th day of March, A. D. 1860, the said plaintiffs, N. Corwith & Co., sued out of the Clerk's Office of said court a writ of summons against the said defendant, William Patterson, which is in the words and figures following, to wit:

THE UNITED STATES OF AMERICA, } ss.
District of Iowa. }

To the Marshal of said District, greeting:

In the name of the President of the United States, we command you to summon William Patterson, defendant, a citizen of and resident in the State and District of Iowa, if he be found in your bailiwick, to be and appear before the District Court of the United States for the District of Iowa aforesaid, at Keokuk, in said district, on the third Tuesday in the month of March, A. D. 1860, to answer unto N. Corwith & Co., plaintiffs, citizens of the State of Illinois, of a plea of debt—damages $2,000. Action brought on a note made by R. P. Creel for thirteen hundred and seventy-five dollars, ($1375,) endorsed by defendant, William Patterson, and have then and there this writ.

Witness the Honorable J. M. Love, Judge of said District Court, this 6th day of March, A. D. 1860, and in the eighty-fourth year of the Independence of the United States of America.

Attest: J. C. BURNS, Clerk.
By A. T. WALLING, Deputy.

Which said writ was afterwards, to wit, on the 9th day of March, A. D. 1860, returned into the clerk's office of said court, endorsed as follows, to wit:—"March 7th, 1860, this summons came in my hands, and on the 9th day of March, A. D. 1860, I served it on William Patterson, by reading it to Eleanor Patterson, his daughter, personally. She is a member of his family, and over the age of fourteen years. Also, by giving her a copy of the same for said Patterson, at his house, his usual place of residence in the City of Keokuk, Lee county, Iowa. William Patterson not found after due search.

L. SUMMERS, U. S. Marshal.
By J. Y. ANTHONY, Deputy.

And afterwards, to wit, on the 22d day of March, A. D. 1860, the said defendant, William Patterson, filed in the clerk's office aforesaid his plea in abatement against plaintiffs' petition, in the words and figures following, to wit:

N. CORWITH & Co.
vs.
WM. PATTERSON.

Defendant, William Patterson, comes now and makes his plea in abatement, and says that plaintiffs ought not to maintain this action against him (def't) in this court, for that

This court has no jurisdiction of plaintiffs' cause of action against him, (defendant,) for that defendant never contracted with plaintiffs in manner and form as alleged, or in any other manner or form; that he, defendant, if he ever did endorse or deliver said note to any person, (which is denied,) he endorsed and delivered same to one R. P. Creel, who is, and was at the time, a citizen of the State of Iowa, or to some other person who is and was a citizen of the State of Iowa. That he, defendant, never delivered or was privy to any delivery of said note to any person or persons who then were or now are non-residents of the State of Iowa. Wherefore this court has no jurisdiction of the plaintiffs' cause of action against him.

He therefore prays the judgment of the court that this action may abate, and for his costs.

MARSHALL & TODD,
For Defendant.

And afterwards, on the day last aforesaid, to wit, the 22d day of March, A. D. 1860, defendant, William Patterson, filed in the clerk's office aforesaid his answer to the petition of plaintiffs, in the words and figures following, to wit:

N. CORWITH & Co.
vs.
WM. PATTERSON.

Defendant, for answer to plaintiffs' petition, filed in this case, says:

That he specifically and severally denies each and every material affirmative allegation therein made.

That he specifically denies that the defendant is in any way liable to plaintiffs for the payment of the amount of the note sued on.

Denies that plaintiffs have any such note. That he, defendant, ever endorsed said note; that plaintiffs are the real owners of said note, or have any authority to bring this action on same as in man-

ner and form they have; denies that any due presentment of said note was ever made to the maker of same, or any due demand of payment of him, the maker, made.

He therefore prays judgment for his costs.

MARSHALL & TODD,
For Defendant.

And afterwards, to wit, on the day last aforesaid, to wit, the 22d day of March, A. D. 1860, the said plaintiffs, N. Corwith & Co., filed in the clerk's office of said court their demurrer to defendant's plea in abatement, in the words and figures following, to wit:

N. CORWITH & Co.,
vs.
WM. PATTERSON.

And now come plaintiffs, and demur to the plea to the jurisdiction of the court:

1. Because the same sets up no facts which are sufficient to defeat the jurisdiction of the court.

2. Because it is immaterial to whom defendant delivered the note, provided it was endorsed by him, and came to the ownership of plaintiffs.

RANKIN, MILLER & EUSTER.

And afterwards, to wit, on the 24th day of March, A. D. 1860, the following entry was made on the minute record of said court, to wit:

N. CORWITH & Co.
vs.
WM. PATTERSON.

This cause came on to be heard upon the demurrer of plaintiffs to defendant's plea in abatement, and the court being advised in the premises, sustains the demurrer. Whereupon defendant has leave of court to file an amended answer, which was done.

And afterwards, on the day last aforesaid, to wit, the 24th day of March, A. D. 1860, the defendant filed in the clerk's office aforesaid his amended answer, in the words and figures following, to wit:

N. CORWITH & Co.
vs.
WM. PATTERSON.

Now comes defendant, William Patterson, by leave of the court, and amends his answer in this case, says:

That plaintiffs are indebted to him for money loaned, than the sum of two thousand and fifty dollars, and for pork and other pro-

perty sold and delivered to them, the sum of twenty-one hundred and ten dollars, and now set same up as set-off.

And says that said note has been paid, and pleads payment, and prays judgment for the amount claimed.

MARSHALL & TODD,
For Defendant.

And afterwads, on the same day, to wit, the 24th day of March, A. D. 1860, the plaintiffs, N. Corwith & Co., filed in the clerk's office aforesaid their replication to the answer of defendant, in the words following, to wit:

N. CORWITH & Co.
vs.
WILLIAM PATTERSON.

And now comes the plaintiffs, and deny that any part of the note sued on has been paid, and deny that they are indebted to defendant for money loaned or pork, or any other matter, in any sum whatever.

RANKIN, MILLER & EUSTEN,
Attorneys for Plaintiffs.

And afterwards, on the day first aforesaid, to wit, the 24th day of March, A. D. 1860, the following entry was made on the minute record of said court, to wit:

N. CORWITH & Co.
vs.
WILLIAM PATTERSON. } Debt.

This day came the plaintiffs, by Rankin, Miller & Eusten, their attorneys, and defendant by Marshall & Todd, his attorneys, and this cause coming on for hearing, and the issue being joined herein, there came a jury to try the same, to wit: W. S. Mathews, E. Baldwin, C. R. Dimond, R. Robinson, Theodore Van Alst, G. Hamilton, Claiborne Lee, Quincy Dehuff, D. B. Smith, Dennis Barnes, J. S. Bartruff, and William Thompson, twelve good and lawful men, having the qualifications of jurors, who were duly empanneled and sworn, and after hearing the evidence, argument of counsel, and instructions of the court, returned the following verdict: "We, the jury, find for the plaintiffs, and assess the damages at sixteen hundred and two $\frac{10}{100}$ dollars.

It is therefore ordered and adjudged by the court, that plaintiffs have and recover of defendant the sum of $\$1{,}602\frac{10}{100}$, the sum found due as aforesaid, as the further sum of $32 30, the costs and charges of this suit.

Whereupon comes defendant, by his attorney, and excepts to the ruling of the court in this cause, in admitting protest of the note sued on in evidence, and his bill of exceptions is signed by the court.

And afterwards, on the day last aforesaid, to wit, on the 24th day of March, A. D. 1860, the defendant, William Patterson, by his attorneys, filed his bill of exceptions in the clerk's office of said court, in the words and figures following, to wit:

N. CORWITH & Co. vs. WILLIAM PATTERSON. } In the District Court of the U. S. for the Southern District of Iowa.

No. 210.

Be it remembered, that among other things, the following proceedings were had on this 24th day of March, A. D. 1860, at the March Term, A. D. 1860, of said court. The above entitled cause coming on to be heard on the petition of plaintiff, and answer and amended answer of defendant, and plaintiffs' replication and denial of matters set up in the amended answer of defendant, when plaintiff offered in evidence to the jury a note and protest, as follows:

[No. 8990.]

$1375. Keokuk, Aug. 3d, 1858.

One year after date, I promise to pay to the order of William Patterson thirteen hundred and seventy-five dollars, for value received, with interest from date, at ten per cent. per annum.

Aug. 3–6. R. P. CREEL.

Protested for non-payment, August 6th, 1859, by R. B. Foote, Notary Public.

Endorsements on the back of the note:

"Wm. Patterson, Keokuk. R. P. Creel. Aug. 3–6, 1859. $1375.

Pay to the order of N. Corwith & Co.

WM. PATTERSON.

STATE OF IOWA, Lee County, } ss.

Be it known, that on the sixth day of August, in the year of our Lord eighteen hundred and fifty-nine, at the request of H. K. Love & Co., holders of the original promissory note, I, Robert B. Foote, Notary Public in and for the county aforesaid, duly appointed and qualified, and residing in the City of Keokuk, in the county aforesaid, did present the said promissory note, which is hereto annexed, to R. P. Creel, the maker of the said note, and demanded payment thereof, which was refused. Whereupon I, the said Notary, at the request aforesaid, did protest, and by these presents do solemnly

protest, as well against the drawer and endorser of the said promissory note, as against all others whom it may concern, for exchange, re-exchange, and all costs, charges, damages, and interests suffered and to be suffered for want of payment of the said promissory note; and on the same day I deposited in the post-office at Keokuk notice of protest to each endorser, viz:

William Patterson, directed to Keokuk, Iowa.
Thomas B. Scott, } under cover to
N. Corwith & Co., } Messrs. N. Corwith & Co.,
Galena, Ill.,

each of the above places being the reputed place of residence of the persons to whom this notice was directed.

In witness whereof, I have hereunto set my hand and affixed my seal notarial, the day and year aforesaid.

R. B. FOOTE,
Notary Public.

Protesting, $1 75.
Postage.
Recorded, Book No. 4, page 179.

to prove the liability of defendant, when defendant objected to the introduction of the note, for the reason that there was a variance between the note set up and described in the declaration and the one offered, and for the reason that no sufficient proof was made of a demand of payment of the maker of the note, and no sufficient proof was given that defendant had notice of protest; and defendant objected to the introduction of the protest because same was insufficient in law.

J. M. LOVE, [SEAL.]
Judge.

I, J. C. Burns, Clerk of the District Court of the United States for the District of Iowa, do hereby certify that the foregoing pages, numbered from 1 to 14, inclusive, is a true and perfect copy of the record in the case of N. Corwith & Co. vs. William Patterson, as fully and completely as the same remains of record and on file in the clerk's office of said court, at Keokuk, in the southern division of the said district. And I further certify that there is appended hereto a copy of the bond for writ of error, the original writ of error, the original citation and its return, and bond for costs to Clerk of Supreme Court.

Witness my hand and the seal of said court, this 29th day of November, A. D. 1860.

J. C. BURNS, Clerk U. S. D. C.
By A. T. WALLING, Deputy.

[Copy of Bond.]

District Court of the United States for the District of Iowa.

N. CORWITH & Co. } In Error.
vs.
WILLIAM PATTERSON. }

Know all men by these presents, that we, William Patterson, R. P. Creel, and William Timberman, are held and firmly bound unto the above-named N. Corwith & Co., in the sum of three thousand dollars, to be paid to the said N. Corwith & Co., their heirs, executors, administrators and assigns, to which payment, well and truly to be made, we bind ourselves, and each of us jointly and severally, and our and each of our heirs, executors, administrators and assigns, firmly by these presents.

Sealed with our seals, and dated this 31st day of March, A. D. 1860.

The condition of the above bond is such, that whereas the above named William Patterson hath prosecuted a writ of error to the Supreme Court of the United States, to reverse the judgment rendered in the above entitled suit by the District Court of the United States for the District of Iowa. Now, therefore, the condition of this obligation is such, that if the above-named William Patterson shall prosecute the writ of error to effect, and answer all damages and costs if he shall fail to make good his plea, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

WM. PATTERSON, [SEAL.]
WM. TIMBERMAN, [SEAL.]
R. P. CREEL, [SEAL.]

Signed, sealed, and delivered, in presence of
J. L. DAVIS.

Approved, March 31, 1860.

J. M. LOVE, U. S. Judge.

Endorsed: "Filed March 31, 1860.
A. T. WALLING, Deputy Clerk."

UNITED STATES OF AMERICA, *ss.*

The President of the United States to the Honorable the Judge of the District Court of the United States for the District of Iowa, greeting:

Because, in the record and proceedings, as also in the rendition of a judgment of the plea, which is in the said District Court before you, and between N. Corwith & Co. and William Patterson, for a claim of two thousand dollars, a manifest error hath happened, to the great damage of the said William Patterson, as by his complaint appears.

We are willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, and therefore do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington the first Monday of December next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and custom of the United States, should be done.

Witness the Honorable Roger B. Taney, Chief Justice of the said Supreme Court, this first Monday (5th day) of December, in the year of our Lord one thousand eight hundred and fifty-nine.

Clerk of the Supreme Court of the United States.

Allowed by

J. M. LOVE,
Judge Dist. Court U. S. for Dist. of Iowa.

Witness my hand and the seal of said court, this 31st day of March, A. D. 1860.

J. C. BURNS,
Clerk Dist. Court U. S. for Dist. of Iowa.
By A. T. WALLING, Deputy.

[Citation.]

THE UNITED STATES OF AMERICA,

To N. Corwith & Co., of Galena, Illinois, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the District Court of the United States for the District of Iowa, southern division, wherein William Patterson is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Roger B. Taney, Chief Justice of the Supreme Court of the United States, this first Monday (5th day) of December, in the year of our Lord one thousand eight hundred and fifty-nine.

Attest: J. M. LOVE,
Judge Dist. Court U. S. for Dist. of Iowa.

Before me, A. T. Walling, a Notary Public in and for the County of Lee, and State of Iowa, personally appeared Samuel T. Marshal, who being duly sworn, deposes and says, that on December 1, 1860, he served a true copy of the within citation on Rankin & Miller, attorneys for N. Corwith & Co., defendants in error, and that Samuel F. Miller, one of the firm of Rankin & Miller, acknowledged service of the same in the words following, to wit:

"As Attorney for N. Corwith & Co., I accept service of the above citation.

December 1, 1860. Signed, SAM. F. MILLER,
Attorney for Corwith & Co.
S. T. MARSHALL.

Witness my hand and notarial seal, this 6th day of December, A. D. 1860.

A. T. WALLING,
Notary Public, Lee Co., Iowa.

[Copy of Bond.]

District Court of the United States for the District of Iowa.

N. CORWITH & Co. vs. WILLIAM PATTERSON. } In Error.

Know all men by these presents, that we, William Patterson, R. P. Creel, and William Timberman, are held and firmly bound unto the above-named N. Corwith & Co., in the sum of three thousand dollars, to be paid to the said N. Corwith & Co., their heirs, executors, administrators and assigns, to which payment, well and truly to be made, we bind ourselves, and each of us jointly and severally, and our and each of our heirs, executors, administrators and assigns, firmly by these presents.

Sealed with our seals, and dated this 31st day of March, A. D. 1860.

The condition of the above bond is such, that whereas the above named William Patterson hath prosecuted a writ of error to the Supreme Court of the United States, to reverse the judgment rendered in the above entitled suit by the District Court of the United States for the District of Iowa. Now, therefore, the condition of this obligation is such, that if the above-named William Patterson shall prosecute the writ of error to effect, and answer all damages and costs if he shall fail to make good his plea, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

WM. PATTERSON, [SEAL.]
WM. TIMBERMAN, [SEAL.]
R. P. CREEL, [SEAL.]

Signed, sealed, and delivered, in presence of
J. L. DAVIS.

Approved, March 31, 1860.

J. M. LOVE, U. S. Judge.

Endorsed: "Filed March 31, 1860.
A. T. WALLING, Deputy Clerk."

UNITED STATES OF AMERICA, *ss.*

The President of the United States to the Honorable the Judge of the District Court of the United States for the District of Iowa, greeting:

Because, in the record and proceedings, as also in the rendition of a judgment of the plea, which is in the said District Court before you, and between N. Corwith & Co. and William Patterson, for a claim of two thousand dollars, a manifest error hath happened, to the great damage of the said William Patterson, as by his complaint appears.

We are willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, and therefore do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington the first Monday of December next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and custom of the United States, should be done.

Witness the Honorable Roger B. Taney, Chief Justice of the said Supreme Court, this first Monday (5th day) of December, in the year of our Lord one thousand eight hundred and fifty-nine.

Clerk of the Supreme Court of the United States.

Allowed by

J. M. LOVE,
Judge Dist. Court U. S. for Dist. of Iowa.

Witness my hand and the seal of said court, this 31st day of March, A. D. 1860.

J. C. BURNS,
Clerk Dist. Court U. S. for Dist. of Iowa.
By A. T. WALLING, Deputy.

[Citation.]

THE UNITED STATES OF AMERICA,

To N. Corwith & Co., of Galena, Illinois, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the District Court of the United States for the District of Iowa, southern division, wherein William Patterson is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Roger B. Taney, Chief Justice of the Supreme Court of the United States, this first Monday (5th day) of December, in the year of our Lord one thousand eight hundred and fifty-nine.

Attest: J. M. LOVE,
Judge Dist. Court U. S. for Dist. of Iowa.

Before me, A. T. Walling, a Notary Public in and for the County of Lee, and State of Iowa, personally appeared Samuel T. Marshal, who being duly sworn, deposes and says, that on December 1, 1860, he served a true copy of the within citation on Rankin & Miller, attorneys for N. Corwith & Co., defendants in error, and that Samuel F. Miller, one of the firm of Rankin & Miller, acknowledged service of the same in the words following, to wit:

"As Attorney for N. Corwith & Co., I accept service of the above citation.

December 1, 1860. Signed, SAM. F. MILLER,
Attorney for Corwith & Co.
S. T. MARSHALL.

Witness my hand and notarial seal, this 6th day of December, A. D. 1860.

A. T. WALLING,
Notary Public, Lee Co., Iowa.